They are in fact a price paid for a commodity, the obligation to pay resting on the promise of the owner implied in the taking of the water. *Vreeland* v. *O'Neil*, 36 N. J. Eq. 399. The better view, therefore, seems to be that water rents are not taxes, and should not constitute a prior lien on a bankrupt's estate.

BANKS AND BANKING — DEPOSITS — RIGHTS OF DEPOSITOR WITHDRAWING DEPOSIT DURING "RUN." — The petitioner, hearing rumors of its insolvency, withdrew his deposit from the X bank. But on the assurance of the X bank's officers that the bank was solvent he immediately returned the money and took drafts for the amount on the Y bank. In fact the X bank was insolvent, though its officers did not know the fact. The drafts were not paid, the Y bank applying the fund on which they were drawn to the payment of notes of the X bank held by it and secured by collateral. *Held*, that the petitioner is entitled to be subrogated to the rights of the Y bank in the collateral which it held. *Livingstain* v. *Columbia Banking and Trust Co.*, 62 S. E. 249 (S. C.).

The prevailing doctrine is that a payment to a depositor during a "run" on a bank is not a preference, provided the bank is continuing in business and the payment is made in the regular course thereof, even though the bank is insolvent to the knowledge of its officers. *Stone* v. *Jenison*, 111 Mich. 592. Hence the money withdrawn by the petitioner in the present case was not impressed with a trust in favor of the bank's general creditors. The drafts must therefore be regarded as issued for cash paid into the bank. But this does not warrant the relief given. For by the weight of authority the purchaser of a draft drawn by an insolvent bank has no priority over the general creditors against the funds on which the draft was drawn. *Clark* v. *Toronto Bank*, 72 Kan. 1. *Contra*, *Roberts* v. *Corbin*, 26 Ia. 315. It is therefore submitted that the case falls within the rule that subrogation, being founded on equitable principles, should not be applied against the interests of persons having equities equal to that of the claimant. *Cf. Ex parte Reynolds*, 68 S. C. 436. But see *Livingstain* v. *Columbia Bank*, 77 S. C. 305.

BILLS AND NOTES — DOCTRINE OF PRICE *v.* NEAL — WHERE DEFENDANT IS NOT AN INNOCENT HOLDER FOR VALUE. — A person not disclosed forged a check payable to a city and without the defendant's knowledge or request delivered it to the city in payment of improvement assessments on the defendant's land. The drawee bank paid the check to an innocent holder for value and after discovery of the forgery sought to recover from the defendant. *Held*, that the plaintiff may not recover. *Title Guarantee and Trust Co.* v. *Haven*, 126 N. Y. App. Div. 802.

It has long been law that the drawee of a forged check who has paid the same to an innocent holder for value cannot recover from the latter. *Price* v. *Neal*, 3 Burr. 1354. Not only has this much criticised rule been adopted as common law in this country, but it has also been made a part of the Negotiable Instruments Law. See N. Y. Laws of 1897, c. 612, § 112. Though the principal case is professedly decided on the doctrine of *Price* v. *Neal*, it is difficult to see the application. This is not a case wherein "one of two innocent parties must suffer a loss in any event," nor does it come within the reason of the rule that as between parties having equal equities the loss must rest where it falls." See 4 HARV. L. REV. 297. Whether an action for money paid to the defendant's use would lie, the authorities seem doubtful. *Mattlage* v. *Lewi*, 6 N. Y. Misc. 150. However, it is submitted that a quasi-contractual remedy exists; for the defendant, if allowed to retain the fruits of the fraud without liability, is clearly unjustly enriched.

BILLS AND NOTES — FICTITIOUS PAYEE — THE NEGOTIABLE INSTRUMENTS LAW. — A drew a check on the plaintiff payable to B, a real person, and forged C's signature thereto. The plaintiff accepted the check. A then forged B's signature as indorser after which the check passed in due course of business to the defendant who paid it. The plaintiff paid the defendant, but on discovering the forgery sought to recover the amount paid. *Held*, that the plaintiff may

not recover. *The Trust Co. of America* v. *Hamilton Bank*, 127 N. Y. App. Div. 515.

The Negotiable Instruments Law provides that "the instrument is payable to bearer . . . when it is payable to the order of a fictitious or non-existing person and such fact was known to the person making it so payable." See N. Y. Gen. Laws, c. 50, § 28. In the principal case the instrument was made payable in name to a real person. But in this country the intention of the drawer determines the fictitiousness of the payee. *Shipman* v. *Bank*, 126 N. Y. 318; *Armstrong* v. *Nat'l Bank*, 46 Oh. St. 512. If the drawer intends that the name inserted as payee shall not represent any person who shall receive an interest in the check, the payee is fictitious. See *Shipman* v. *Bank*, *supra*. And the possibility of identifying such name with some existing person is of no consequence. *Phillips* v. *Mercantile Nat'l Bank*, 140 N. Y. 556. The main case therefore seems correct. The same result has been reached in England under the Bills of Exchange Act in a case involving exactly similar facts. *Bank of England* v. *Vagliano Bros.*, [1891] A. C. 107. The New York statute to have avoided litigation on this point might have added the further clause: "or to a living person not intended to have any interest in it."

BROKERS — CUSTOMERS' RIGHTS IN PROCEEDS OF STOCK WRONGFULLY REPLEDGED. — A delivered shares of stock to a broker for safe keeping; B pledged shares with him as collateral for advances; the broker held shares purchased for C on margin. The broker pledged all the shares to D and then became insolvent. D, to satisfy his claim, sold all of A's and some of B's shares. *Held*, that A is entitled to have the stock of B and C sold and the proceeds applied in satisfaction of his claims against the broker. *Matter of Mills*, 39 N. Y. L. J. 761 (N. Y., App. Div., May, 1908). See NOTES, p. 133.

CONSTITUTIONAL LAW — CLASS LEGISLATION — DENIAL OF RIGHT TO CHALLENGE GRAND JURORS. — A New Jersey statute provided that any grand juryman over 65 years old might be challenged, but that such challenge must be taken before the impaneling of the grand jury. The defendant was convicted of a murder committed after the grand jury was impaneled. Two of its members were over 65 years old. *Held*, that although the defendant was unable to challenge, his conviction is not a denial of equal protection of the laws. *Lang* v. *New Jersey*, 209 U. S. 467.

Equal protection of the laws requires that all persons shall be treated alike in like circumstances. But classification based upon some real difference is not thereby prohibited. Accordingly, statutes allowing more challenges in large cities than elsewhere, or fewer challenges in the event of a struck jury, do not deny the equal protection of the laws. *Hayes* v. *Missouri*, 120 U. S. 68; *Brown* v. *New Jersey*, 175 U. S. 172. In the principal case, if offenders are divided into two classes — those committing crime before and after the impaneling of the grand jury — there is certainly no discrimination within the classes. And a difference in time is one upon which classification for the more efficient administration of justice may reasonably be based. See *State* v. *Jackson*, 105 Mo. 196. But according to the interpretation of the statute by the New Jersey court, there is no real classification; for the defendant had the same right, though not the same motive, as those who had committed offenses before the impaneling of the grand jury, to challenge before that time. *State* v. *Lang*, 68 Atl. 210 (N. J.). Hence he has not been subjected to unfavorable discrimination. It is upon this theory that the case may be most satisfactorily supported.

CONSTITUTIONAL LAW — SEPARATION OF POWERS — JURISDICTION OF THE COURTS OVER CONTROVERSIES INVOLVING POLITICAL QUESTIONS. — The plaintiff brought an action in the courts of British India to establish his right to succeed to lands there situated as the rightful successor to the existing Rajah of an independent native state. *Held*, that the court has no jurisdiction, since, the plaintiff's property right being merely contingent, the court is really asked to determine the succession to the throne of a sovereign. *Shamarendra Chandra Deb Barman* v. *Birenda Kishore Deb Barman*, 12 Calcutta W. N. 777 (Calcutta High Ct., May 21, 1908). See NOTES, p. 132.